

11

1 Carl W. Collins (State Bar No. 109282)  
2 Attorney at Law  
3 1127-12th Street, Suite 202  
4 P. O. Box 3291  
5 Modesto, California 95353  
6 Telephone (209) 521-8100  
7 Facsimile (209) 524-8461  
8 E-mail carl@cwcollinslaw.com

6 Attorney for Trustee  
7 Stephen C. Ferlmann

9 IN THE UNITED STATES BANKRUPTCY COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11 (Modesto Division)

12 In re: ) Case No: 09-90452-E-7  
13 DELIDDO & ASSOCIATES, INC. ) Chapter 7 case  
14 dba DEERS, )  
15 P.O. Box 187 )  
16 Salida, CA 95368 )  
17 Tax ID/EIN 77-o444949 )  
18 Debtor. )

19 STEPHEN C. FERLMANN, Trustee ) Adv. Proc. No.  
20 Plaintiff, )  
21 vs. )  
22 JACK P. DELIDDO, )  
23 Defendant. )

24  
25 **COMPLAINT TO RECOVER AVOIDABLE TRANSFERS**

26  
27 Plaintiff, Stephen C. Ferlmann, Trustee in Bankruptcy  
28 respectfully represents:

**JURISDICTION AND VENUE**

1  
2 1. The above-entitled Court has jurisdiction over this  
3 adversary proceeding pursuant to 28 U.S.C. § 1334. This is a  
4 core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (F) and (O).

5 2. This adversary proceeding is brought pursuant to Rule  
6 7001, et. seq. of the Federal Rules of Bankruptcy Procedure and  
7 sections 544, 547, 548, 549 and 550 of Title 11 of the United  
8 States Code ("Bankruptcy Code") and California Civil Code §§  
9 3439.04 and 3439.05.

10 3. Venue in the court is proper pursuant to 28 U.S.C. §  
11 1409 as this adversary proceeding arises under and in connection  
12 with a case under the Bankruptcy Code which is pending in this  
13 District.

**PARTIES**

14  
15 4. Plaintiff, Stephen C. Ferlmann, is the duly qualified  
16 and acting Trustee of the estate of DeLiddo & Associates, Inc.  
17 dba DEERS ("Debtor"), Chapter 7 debtor in the above-captioned  
18 case.

19 5. Plaintiff is informed and believes that defendant, Jack  
20 P. DeLiddo, is an individual with a mailing address of 1176  
21 Bogarin Road, Ripon, CA 95366. Plaintiff is informed and  
22 believes that Jack P. DeLiddo is the President and principal  
23 shareholder of the Debtor.

**GENERAL ALLEGATIONS**

24  
25 6. On February 24, 2009, the Debtor filed a petition under  
26 Chapter 11 of the Bankruptcy Code, in the above-entitled Court.

27 7. On January 29, 2010, this case was converted to a case  
28 under Chapter 7, with Stephen C. Ferlmann being appointed as the  
Chapter 7 Trustee on February 2, 2010.

[Preferential Transfer - 11 U.S.C. § 547]

11. Plaintiff alleges that at the time of said Transfers, Debtor was insolvent.

13. Plaintiff alleges that the Transfers made within one year prior to February 24, 2009, may be avoided under 11 U.S.C. § 547.

[Unauthorized Post-Petition Transfer - 11 U.S.C. § 549]

15. Plaintiff is informed and believes and thereon alleges that subsequent to February 24, 2009, the date of the commencement of the Debtor's bankruptcy case, the Debtor transferred property identified in Exhibit "B" (the "Intercompany Transfers") to or for the benefit of the defendant, Jack P. DeLiddo, totaling \$1,628,964.50, according to proof at trial.

17. Plaintiff alleges that pursuant to 11 U.S.C. § 549, these transfers may be avoided as unauthorized transfers of property of the estate made after the commencement of the case.

[Fraudulent Transfer - 11 U.S.C. § 544  
and California Civil Code §§ 3439.04 -.05]

18. Plaintiff realleges and incorporates by reference,

1 paragraphs 1 through 17, inclusive, as though fully set forth  
2 herein.

3       19. Plaintiff is informed and believes and thereon alleges  
4 that the Debtor transferred property identified in Exhibit "B"  
5 (the "Intercompany Transfers") to or for the benefit of the  
6 defendant, Jack P. DeLiddo, within the last four years totaling  
7 approximately \$1,628,964.50, according to proof at trial. Upon  
8 information and belief, the Intercompany Transfers consisted of  
9 the assignment of several note receivables from the defendant,  
10 Jack P. DeLiddo, to and through Clairvoyant, LLC, California New  
11 Power 2006-1, LLC and the Debtor which allegedly reduced the  
12 defendant, Jack P. DeLiddo's, outstanding obligations owed to the  
13 Debtor by \$1,628,964.50. Plaintiff believes and alleges that the  
14 defendant, Jack P. DeLiddo, may have received additional  
15 transfers directly to or for his benefit within the last four  
16 years and that information regarding transfers identified in  
17 Exhibit "B" may need to be corrected upon further investigation.  
18 Plaintiff reserves the right to include any additional fraudulent  
19 transfers to the defendant, Jack P. DeLiddo, that are hereafter  
20 discovered in this complaint and/or to amend this complaint to  
21 avoid and recover such transfers, but only to the extent the  
22 Court requires an amended complaint to be filed in order for such  
23 transfers to be avoided and recovered.

24       20. Upon information and belief, the Intercompany Transfers  
25 were made with actual intent to hinder, delay, or defraud the  
26 Debtor's creditors.

27       21. Upon information and belief, the Intercompany Transfers  
28 were made without the Debtor receiving a reasonably equivalent  
value in exchange.

23. At the time of the Intercompany Transfers, the defendant, Jack P. DeLiddo, was the managing member, officer, director and/or a person in control of Clairvoyant, LLC, California New Power 2006-1, LLC and the Debtor and the defendant, Jack P. DeLiddo, knew that the Debtor would not have sufficient funds to pay all of its creditors in Chapter 11.

25. The Intercompany Transfers may be avoided under 11 U.S.C. § 544.

[Fraudulent Transfer - 11 U.S.C. § 548]

27. Plaintiff is informed and believes and thereon alleges that within two years prior to February 24, 2009, the date of the commencement of the Debtor's bankruptcy case, the Debtor transferred property identified in Exhibit "B" (the "Intercompany Transfers") to or for the benefit of the defendant, Jack P. DeLiddo, within the last four years totaling approximately \$1,628,964.50, according to proof at trial. Upon information and belief, the Intercompany Transfers consisted of the assignment of several note receivables from the defendant, Jack P. DeLiddo, to and through Clairvoyant, LLC, California New Power 2006-1, LLC

1 and the Debtor which allegedly reduced the defendant, Jack P.  
2 DeLiddo's, outstanding obligations owed to the Debtor by  
3 \$1,628,964.50. Plaintiff believes and alleges that the  
4 defendant, Jack P. DeLiddo, may have received additional  
5 transfers directly to or for his benefit within the last four  
6 years and that information regarding transfers identified in  
7 Exhibit "B" may need to be corrected upon further investigation.  
8 Plaintiff reserves the right to include any additional fraudulent  
9 transfers to the defendant, Jack P. DeLiddo, that are hereafter  
10 discovered in this complaint and/or to amend this complaint to  
11 avoid and recover such transfers, but only to the extent the  
12 Court requires an amended complaint to be filed in order for such  
13 transfers to be avoided and recovered.

14 28. Upon information and belief, the Intercompany Transfers  
15 made within two years prior to February 24, 2009, were made with  
16 actual intent to hinder, delay, or defraud the Debtor's  
17 creditors.

18 29. Upon information and belief, the Intercompany Transfers  
19 made within two years prior to February 24, 2009, were made  
20 without the Debtor receiving a reasonably equivalent value in  
21 exchange.

22 30. At the time of the Intercompany Transfers made within  
23 two years prior to February 24, 2009, the Debtor was insolvent.

24 31. At the time of the Intercompany Transfers made within  
25 two years prior to February 24, 2009, the defendant, Jack P.  
26 DeLiddo, was the managing member, officer, director and/or a  
27 person in control of Clairvoyant, LLC, California New Power 2006-  
28 1, LLC and the Debtor and the defendant, Jack P. DeLiddo, knew

1 that the Debtor would not have sufficient funds to pay all of its  
2 creditors in Chapter 11.

3 32. The Intercompany Transfers made within two years prior  
4 to February 24, 2009, may be avoided under 11 U.S.C. § 548.

5 **FIFTH CLAIM FOR RELIEF**

6 **[To Recover Avoidable Transfers - 11 U.S.C. § 550]**

7 33. Plaintiff realleges and incorporates by reference,  
8 paragraphs 1 through 32, inclusive, as though fully set forth  
9 herein.

10 34. Defendant, Jack P. DeLiddo, was the initial transferee  
11 of the subject Transfers and Intercompany Transfers or the entity  
12 for whose benefit the Transfers and Intercompany Transfers were  
13 made, or is the immediate or mediate transferee of the initial  
14 transferee of such Transfers and Intercompany Transfers, or any  
15 of them.

16 35. Plaintiff alleges that pursuant to 11 U.S.C. § 550, the  
17 bankruptcy estate is entitled to recover, for the benefit of the  
18 bankruptcy estate, the property transferred, or, if the court so  
19 orders, the value of such property, together with interest  
20 thereon.

21 WHEREFORE, plaintiff prays that this Court enter a judgment  
22 as follows:

23 1. Pursuant to 11 U.S.C. §§ 547 and 550, for avoidance of  
24 the above-described Transfers made to defendant, Jack P. DeLiddo,  
25 totaling \$108,831.27, according to proof at trial and a judgment  
26 of this court finding that defendant, Jack P. DeLiddo, has  
27 received the sums enumerated in this complaint as preferential  
28 transfers and that defendant, Jack P. DeLiddo, is obligated to



1 repay such sums in full to the bankruptcy estate of the Debtor  
2 forthwith;

3 2. Pursuant to 11 U.S.C. §§ 549 and 550, for avoidance of  
4 the above-described Intercompany Transfers made to or for the  
5 benefit of defendant, Jack P. DeLiddo, totaling \$1,628,964.50,  
6 according to proof at trial and a judgment of this court finding  
7 that defendant, Jack P. DeLiddo, has received the sums enumerated  
8 in this complaint as unauthorized post-petition transfers and  
9 that defendant, Jack P. DeLiddo, is obligated to repay such sums  
10 in full to the bankruptcy estate of the Debtor forthwith;

11 3. Pursuant to 11 U.S.C. §§ 544, 548 and 550 and California  
12 Civil Code §§ 3439.04 and 3439.05, for avoidance of the above-  
13 described Intercompany Transfers made to or for the benefit of  
14 defendant, Jack P. DeLiddo, totaling \$1,628,964.50, according to  
15 proof at trial and a judgment of this court finding that  
16 defendant, Jack P. DeLiddo, has received the sums enumerated in  
17 this complaint as fraudulent transfers and that defendant, Jack  
18 P. DeLiddo, is obligated to repay such sums in full to the  
19 bankruptcy estate of the Debtor forthwith;

20 4. For attorney's fees and costs of suit herein incurred;

21 5. For prejudgment interest at the legal rate from the date  
22 of the Transfers and Post-Petition Transfer to the entry of any  
23 judgment on this Complaint as to all Claims For Relief; and

24 6. For such other and further relief as the Court deems  
25 just and proper.

26 Dated: 2-18-11

Law Office of Carl W. Collins

  
Carl W. Collins  
Attorney for Plaintiff/Trustee

## EXHIBIT "A"

## Preferential Transfers

Transferee's Name: Jack P. DeLiddo

Bankruptcy Case: DeLiddo & Associates, Inc. dba DEERS  
Case No. 09-90452

Petition Date: February 24, 2009

<u>Date of Payment</u>	<u>Description</u>	<u>Amount of Payment</u>
05-31-08	Misc.	\$ 111.69
06-30-08	Misc.	111.69
06-30-08	Net proceeds from sale of company autos	30,000.00
07-31-08	Misc.	111.69
08-14-08	JD repayment of Baker Project Bond deposit	78,000.00
08-31-08	Misc.	99.24
09-30-08	Misc.	99.24
10-31-08	Misc.	99.24
11-30-08	Misc.	99.24
12-31-08	Misc.	99.24

Total Transfers - 10

**Total Amount \$108,831.27**

## EXHIBIT "B"

## Intercompany Transfers

Transferee's Name: Jack P. DeLiddo  
Bankruptcy Case: DeLiddo & Associates, Inc. dba DEERS  
Case No. 09-90452  
Petition Date: February 24, 2009

<u>Date of Payment</u>	<u>Description</u>	<u>Amount</u>
Unknown - 2009	Assignment of note receivable from Clairvoyant to Debtor	\$845,000.00
Unknown - 2009	Assignment of note receivable from California New Power, LLC ("CNP") to Debtor	7,462.07
Unknown - 2009	Assignment of note receivable from CNP to Debtor	776,502.43

Total Transfers - 3

**Total Amount                    \$1,628,964.50**